United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

76-1015

To be argued by
ALLEN R. BENTLEY

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-1015

UNITED STATES OF AMERICA,
Appellant,

—v.—

ADOLPH RIVERA,
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

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Preliminary Statement

The United States of America appeals pursuant to 18 U.S.C. § 3731 from an order of the Honorable Constance Baker Motley, United States District Judge for the Southern District of New York, rendered in open court on December 12, 1975, granting defendant Adolph Rivera's motion to suppress his post-arrest statements, on the ground that he was illegally arrested.

Indictment 74 Cr. 675 was filed July 8, 1974 in five counts. Count One charged Rivera, Marc Fisher, Kenneth Meyerson and Frederic Glenn with conspiring to distribute and to possess with intent to distribute a Schedule I controlled substance, Lysergic Acid Diethylamide ("LSD"), in violation of Title 21, United States Code, Section 846. Counts Two through Five charged Rivera, Fisher, Meyerson and Glenn, variously with dis-

tributing and possessing with intent to distribute LSD, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(B), and with aiding and abetting the commission of that offense, in violation Title 18, United States Code, Section 2. Rivera was named in Counts Three (998 dosage units), Four (1000 dosage units), and Five (5000 dosage units). Fisher, Meyerson and Glenn have pled guilty and been sentenced.

On March 25, 1975, Rivera moved to suppress his post-arrest statement on various grounds, including the claim that agents of the Drug Enforcement Administration ("DEA") lacked probable cause to arrest him.* At an evidentiary hearing on that claim, held on December 12, 1975, the Government offered testimony from the two DEA agents who had effected Rivera's arrest. Rivera did not offer any proof. At the conclusion of the hearing, Judge Motley ruled that the agents lacked probable cause to arrest Rivera and granted his suppression motion. Trial of Rivera has been stayed on the Government's motion, pending the determination of the instant appeal.

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* Rivera had previously moved, by notice of motion dated July 26, 1974, to suppress his post-arrest statements on the ground that he had requested and been denied an opportunity to call a lawyer before making those statements. Judge Motley denied that motion in open court on September 13, 1974, after an evidentiary hearing held that same day, finding that Rivera, prior to the challenged statements, had been permitted to make a phone call to a friend for the purpose, among others, of obtaining an attorney (A-15, A-46).

References to pages of the Government's Appendix are abbreviated herein as "A-"; references to the pages of those portions of the first hearing not reproduced in the Appendix are abbreviated as "Tr."

Statement of Facts

The undisputed evidence adduced at the evidentiary hearing of December 12, 1975 established the following.

At about 7:00 p.m. on April 16, 1974, as a result of an undercover investigation, DEA agents arrested Marc Fisher and Kenneth Meyerson and seized 2,000 dosage units of LSD at El Tor Restaurant in Manhattan. Meyerson, who had supplied the LSD to Fisher for sale to the agents, agreed to cooperate by introducing an undercover agent to his source, Fred Glenn (A-50). Meyerson called Glenn from the DEA offices and a meeting was arranged for later that evening at Manjos Restaurant in Greenwich Village, at which time Glenn was to sell the agent an additional 5,000 doses of LSD (A-51).

Meyerson and an undercover DEA agent, Michael O'Connor, arrived at Manjos at about 11:20 p.m., shortly before Glenn's anticipated arrival. They sat in a booth and ordered food (A-55). Undercover surveillance agents were positioned elsewhere in the restaurant (A-67). A few minutes later, Glenn and Rivera entered the restaurant. Meyerson told the agent that "his people were here" (A-55) and pointed out Glenn and Rivera, who approached Meyerson and O'Connor and sat down with them. Glenn and Rivera were seated on the aisle, with Rivera next to O'Connor and Glenn next to Meyerson. Rivera and O'Connor had their backs to the entrance of the restaurant.

Meyerson introduced O'Connor as the person who wanted to purchase "the additional stuff that Mr. Meyerson used" (A-56). Glenn then asked Meyerson where the money was for the first 5,000 doses which Glenn understood to have been sold to O'Connor by Meyerson at El Tor.* O'Connor replied that he had the money and

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* Only 2,000 doses were seized at El Tor; the disposition of the other 3,000 doses is unknown.

would keep it "until the additional 5,000 went" (A-56-A-57). Glenn said that he preferred not to do it in the restaurant because it was a public place. He suggested that the deal be transacted at his apartment, a proposal which O'Connor rejected (A-57).

After further discussion, it was agreed, at O'Connor's suggestion, that O'Connor would count out the money representing payment for the first 5,000 dosage units ($1800 in large bills) in such a way that Rivera could verify that it was all there. O'Connor would then pass the money under the table to Glenn, who in turn would pass the second 5,000 doses under the table to O'Connor. Upon receiving the second 5,000 doses, O'Connor would again pay Glenn, using the same procedure (A-57). This plan of action was generally agreed to; Rivera indicated his assent by nodding (A-58).

O'Connor then counted the money, as Rivera watched. O'Connor held the money between himself and Rivera, beneath the level of the table top. After O'Connor finished counting out the money, Rivera looked at Glenn, O'Connor passed the money under the table to Glenn, and Glenn passed 5,000 doses of LSD under the table to O'Connor. After examining the LSD, O'Connor gave a pre-arranged signal and the surveillance agents arrested Glenn and Rivera (A-59).*

Moments after his arrest, outside of Manjos Restaurant, Rivera was fully advised of his constitutional rights (A-12).** He and Glenn were processed at the DEA

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* The agents also "arrested" Meyerson (A-7[illegible]), presumably to preserve his then confidential status as a cooperating defendant.

** These facts, and those that follow in the text, are taken from the evidence adduced at the evidentiary hearing on Rivera's first, unsuccessful motion to suppress, held on September 13, 1971 before Judge Motley.

headquarters (A-13); neither defendant there made any incriminating statements. Following that, at about 1:00 a.m., Rivera and Glenn were transported to the Federal detention facility at West Street for overnight lodging (A-13). The West Street facility evidently had room for only one more prisoner, and Rivera and Glenn had indicated that they did not want to be separated. Accordingly, in an effort to keep the defendants together, both were taken to the Manhattan House of Detention for Men ("the Tombs"). When officials at the Tombs refused to accept custody of the men because the agents lacked supporting documentation, Rivera and Glenn were returned to West Street, where they were lodged (A-14). The time of their rearrival was approximately 3:15 a.m. (*id.*).

The following morning, April 17, 1974, at about 10:00 a.m., after Rivera had had breakfast at West Street (Tr. 70), DEA agents picked up Rivera and Glenn at West Street and escorted them to the Office of the United States Attorney (A-20). Interviews of the five defendants then involved in this case began with that of Meyerson at 10:45 a.m. (A-36).*

At 12:30 p.m., Rivera sought permission to make a telephone call. Permission was granted, and Rivera called an acquaintance and asked the latter to call Rivera's employer, as well as another friend who was to help in obtaining Rivera a lawyer (A-15-A-46; Tr. 69). Thereafter, at about 1:10 p.m. (A-36), Rivera was interviewed by Assistant United States Attorney James Nesland. After again being advised of his rights, Rivera made the statements which the court below suppressed (A-37-A-40).

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* Richard Hamilton, who was arrested with Fisher and Meyerson at El Tor, was not indicted.

ARGUMENT

POINT I

Judge Motley erred in finding that the agents lacked probable cause to arrest Rivera.

The validity of Rivera's arrest, effected at the climax of a fast-developing investigation, must turn on whether or not the agents had probable cause. Probable cause exists where "the facts and circumstances within [the arresting officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that" an offense is being committed. *Carroll* v. *United States*, 267 U.S. 132, 162 (1925). It is axiomatic that establishing probable cause for arrest differs from proving guilt beyond a reasonable doubt in that the quantum of evidence required to make a lawful arrest is less than that needed to sustain a conviction, and the determination of probable cause may be made on the basis of evidence which would not even be admissible at trial. *Brinegar* v. *United States*, 338 U.S. 160, 174-175 (1949).

In ruling that the agents lacked probable cause to arrest Rivera, the District Court reasoned as follows:

> It just doesn't seem to me to make any sense to have Mr. Rivera watch the counting of the money which was done in a restaurant. What was the point of that? All he had to do was hand it to Glenn under the table and have Mr. Glenn count it to satisfy himself that he had $1800 and then pass the second installment. There wasn't any reason in the world to involve the defendant Rivera, as the defendant Rivera claims. His claim is he was just brought into this by the agent, and we are examining his claim to see whether there is anything to that, aren't we?
>
> * * *

* * [A]s I see it he [O'Connor] had no basis for concluding that Mr. Rivera was a partner or had constructive possession of the LSD when he sat down at the table with Glenn. He then suggested, according to his testimony, that Rivera watch the counting of some money. He doesn't tell us that Rivera said anything, he simply nodded, and then, when the money was counted, he doesn't tell us that Rivera nodded to Glenn. So that I don't think he had any probable cause to believe that Rivera had constructive possession of that merchandise.

* * *

* * He [O'Connor] didn't testify that Rivera nodded or said anything after the money was counted, and it is the defendant's claim that this was something made up by O'Connor to involve Rivera, and it seems to me that is what happened here. O'Connor didn't have any probable cause to believe that Rivera had constructive possession of that merchandise when he came into the restaurant. Meyerson certainly hadn't mentioned it. Meyerson called Glenn. Glenn had the package in his possession. From all that appears, Rivera just happened to be along. Glenn did not intend to have any transaction in the restaurant, as O'Connor himself testified. Glenn said he wouldn't have any transaction in the restaurant. He, Glenn, was conducting this. And it was O'Connor who brought Rivera into it, and there is no basis for, even on his testimony, concluding that Rivera even agreed, because he doesn't tell us that Rivera said anything or did anything. He said he watched him count some money as he held it to his side and then he passed the money under the table to Glenn first, which he certainly could have done in the first instance and said "Here, count it, and then give the second package," because if the

> package had come first then his story would have a little more validity, but he passed the money first, which renders his statement that Rivera had to watch the counting not believable.
>
> The motion is granted (A-103-A-107).

The District Court's opinion errs in at least three critical respects: in holding that little or no weight should be given Rivera's conduct because it was not necessary to the consummation of the transaction; in overlooking the evidence that Rivera aided and abetted the distribution of LSD; and in applying the concept of entrapment to the determination of probable cause.

First, the issue of whether Rivera's participation in the transaction was a *sine qua non* to its consummation was irrelevant to a determination of the existence of probable cause. The fact is that Rivera did knowingly participate. It is certainly no bar to a criminal charge that the illicit enterprise with which a defendant was associated could have succeeded without his participation.

Second, the District Court wholly failed to recognize that O'Connor had probable cause to believe that Rivera had aided and abetted the distribution of LSD, irrespective of whether or not the facts known to him warranted a belief that Rivera had conspired with Glenn or had constructive possession of the LSD. By the time O'Connor flashed the pre-arranged arrest signal, he knew that Rivera had accompanied Glenn to the locus of an LSD sale, that cooperating defendant Meyerson had identified Rivera and Glenn as "his people", that Rivera had listened while Glenn asked about getting paid for an earlier sale and discussed the sale of a second 5,000 doses, and that Rivera had nodded to indicate that he would watch as O'Connor counted $1800, and had indeed done so, with the consent of the man who had physical custody of the

LSD.* Contrary to the District Court's opinion that Rivera's participation was too peripheral to warrant his arrest because he had not "said anything, he simply nodded" (A-105), it is well established that "evidence of an act of relatively slight moment may warrant a jury's finding participation in a crime." *United States* v. *Garguilo*, 310 F.2d 249, 253 (2d Cir. 1962). Indeed, this Court has held on numerous occasions that evidence of no greater weight is sufficient to sustain a jury finding of guilt beyond a reasonable doubt. *United States* v. *Tramunti*, *supra*, 513 F.2d at 1110-1111; *United States* v. *Terrell*, 474 F.2d 872 (2d Cir. 1973); *United States* v. *Puco*, 476 F.2d 1099, 1104 (2d Cir.), *cert. denied*, 414 U.S. 844 (1973). *A fortiori*, there was probable cause for Rivera's arrest. *Brinegar* v. *United States*, *supra*, 383 U.S. at 175; *United States* v. *Tramunti*, *supra*, 513 F.2d at 1104.

Finally, the District Court was wide of the mark in stressing the fact that Rivera's participation was suggested by O'Connor and strongly implying that the arrest was illegal because Rivera had been entrapped. Probable cause must be evaluated in terms of the facts

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* Unlike cases involving arrests based on information supplied by an informant, *United States* v. *Soyka*, 394 F.2d 443 (2d Cir. 1968), *cert. denied*, 393 U.S. 1095 (1969), on circumstantial evidence, *United States* v. *Tramontana*, 460 F.2d 464 (2d Cir. 1972), or on surveillance of apparent criminal activity, *United States* v. *Tramunti*, 513 F.2d 1087, 1103-04 (2d Cir.), *cert. denied*, 44 U.S.L.W. 3201 (October 6, 1975); *United States* v. *Olsen*, 453 F.2d 612 (2d Cir.), *cert. denied sub nom. Leach* v. *United States*, 406 U.S. 927 (1972), in this case Agent O'Connor was privy to and witnessed a crime in progress. The first-hand nature of the information available to O'Connor in making the decision to arrest virtually eliminates the question of reliability so often at issue in probable cause litigation, *see, e.g., Aguilar* v. *Texas*, 378 U.S. 108 (1964), leaving the sufficiency of the facts as the critical issue on this appeal.

known to the arresting agents, who are duty-bound to arrest if they have reasonably reliable information showing that a felony has been or is being committed. The question of whether the Government could successfully prosecute a suspect is often quite a different issue, for prosecution of the accused may be foreclosed, not because no crime has been committed, but because the defendant has established an affirmative defense such as expiration of the statute of limitations, entrapment or coercion. These defenses reflect public policy choices quite distinct from, and in some cases antagonistic to, society's interest in the detection and prosecution of crime—the latter being the primary task with which police authorities are charged. It would be unwise in the extreme to require the agent in the field to make fine judgments about the efficacy of the affirmative defenses which an arrestee might later raise in bar to his prosecution or at trial. As with the reasonable doubt standard and common law rules of evidence, which serve a vital role in protecting an accused from unwarranted conviction, "if . . . [affirmative defenses] were to be made applicable in determining probable cause for an arrest . . . few indeed would be the situations in which an officer, charged with protecting the public interest by enforcing the law, could take effective action toward that end." *Brinegar v. United States*, 338 U.S. 160, 174 (1949).*

The wisdom of not requiring an arresting agent to weigh evidence which may support an affirmative defense is particularly well illustrated with respect to entrapment. Allegations of entrapment require a two-pronged inquiry: (1) whether there was any governmental inducement and, if so, (2) whether the defendant was pre-

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* *Cf. United States* v. *Calandra*, 414 U.S. 338, 345 (1974) (even unconstitutionally obtained statements could furnish a basis for a Grand Jury's finding of probable cause).

disposed to commit the offense. While findings of inducement—which need be supported only by "some evidence"—may readily be made, judicial determinations of the issue of predisposition typically require assaying a multitude of facts and all the variegated past conduct of a defendant which may bear on his state of mind—his predisposition—at the time of the offense charged. To require an agent who is contemplating making an arrest to evaluate the extent to which a suspect was predisposed to commit the offense is to encumber the determination of probable cause with wholly unworkable subtleties. The implicit legislative policy underlying the entrapment defense operates to preclude "criminal punishment", *United States* v. *Russell*, 411 U.S. 423, 435 (1973), of one who, lacking predisposition, is induced by a Government agent to commit an offense. There is no authority for extending that policy to invalidate an arrest, made in good faith, merely because the defendant's actions, albeit willing, were suggested by a Government agent.*

In light of the foregoing, Judge Motley's finding that the agents lacked probable cause to arrest Rivera is clearly erroneous and should be reversed.

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* Indeed, it is questionable in any event whether the record contains facts which would warrant submission of the issue of entrapment to a jury at trial. See *United States* v. *Licursi*, 525 F.2d 1164 (2d Cir. 1975). Wholly apart from any evidence of inducement, it is clear that Rivera accompanied Glenn, the drug dealer, to Manjos and there listened to a drug-related conversation and witnessed the illicit transfer of drugs. It is equally clear from the Government's uncontradicted evidence that Rivera was "ready and willing without persuasion", *ibid.*, to aid and abet the offense. Of course the very statement in issue here demonstrates Rivera's predisposition. In that statement, Rivera admitted that he had picked up the LSD in question from one Donald Hillegas, several days before the sale, and had brought it to the apartment which he and Glenn shared.

POINT II

Even assuming the illegality of the initial arrest, Judge Motley erred in suppressing Rivera's post-arrest statements.

Judge Motley here found in the first instance that Rivera's arrest was illegal because it was effected without probable cause and, as a consequence of that fact alone and without further analysis or inquiry, that Rivera's post-arrest statement to an Assistant United States Attorney was the tainted fruit of the primary illegality which the court was required to suppress. The court's conclusion, we respectfully submit, is in error and suffers from the misapplication of the very *per se* rule the Supreme Court has expressly disavowed. *Brown* v. *Illinois*, 422 U.S. 590, 603 (1975). Even assuming *arguendo* the correctness of the court's initial finding that the arrest was illegal (a finding whose propriety we vigorously dispute, see Point I, *supra*), it is clear that Judge Motley, like the lower court in *Brown*, wholly failed to resolve the controlling question of whether the statement in issue was obtained by the exploitation of the initial illegality or rather was sufficiently an act of free will unaffected by the initial illegality. See *Brown* v. *Illinois*, *supra*, 422 U.S. at 600. Had the District Court applied the settled criteria for determining that question to the undisputed facts here, it would, perforce, have concluded that the statements were simply not the fruit of whatever primary illegality there may have been and hence should not have been suppressed.

In *Wong Sun* v. *United States*, 371 U.S. 471, 487-488 (1963), the Supreme Court said:

> "We need not hold that all evidence is 'fruit of the poisonous tree' simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a

> case is 'whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.' Maguire, Evidence of Guilt, 221 (1959)."

Whether the Constitution requires the application of the exclusionary rule to an admission or confession made subsequent to an illegal arrest turns on whether its admission would offend the distinct interests and policies served by the Fourth and Fifth Amendments. See generally *Brown* v. *Illinois*, *supra*, 422 U.S. at 601. As the Supreme Court said recently in *Brown*:

> "In order for the causal chain, between the illegal arrest and the statements made subsequent thereto, to be broken, *Wong Sun* requires not merely that the statement meet the Fifth Amendment standard of voluntariness but that it be 'sufficiently an act of free will to purge the primary taint.' 371 U.S., at 486. *Wong Sun* thus mandates consideration of a statement's admissibility in light of the distinct policies and interests of the Fourth Amendment." 422 U.S. at 602.

Here there can be no claim that the challenged statements were obtained in derogation of the Fifth Amendment standard of voluntariness. It is undisputed that Rivera received appropriate *Miranda* warnings on more than one occasion prior to making the admissions in issue (A-12, A-37), and the record on this appeal is devoid of any substantial evidence of a violation of Rivera's Fifth Amendment rights. *Cf.* 18 U.S.C. § 3501. Indeed, prior to the motion which is the subject of this appeal, Rivera had moved, by notice of motion dated July 26, 1974, to suppress the same statements now in issue on the ground that they were made subsequent to his unfulfilled request for an opportunity to speak to counsel. After an eviden-

tiary hearing on that issue, Judge Motley correctly denied that motion as without a basis in fact (A-45). That finding is amply supported by the record and conclusive for purposes of this appeal.

In contrast, Judge Motley's incorrect determination here that there was a violation of Rivera's Fourth Amendment rights requiring suppression is the apparent product of her application of a forbidden *per se* exclusionary rule to her finding of the arrest's initial illegality. However, whether an illegal arrest requires the exclusion of post-arrest statements is a question which "must be answered on the facts of each case." *Brown* v. *Illinois*, *supra*, 422 U.S. at 603. While the District Court here clearly failed to make the required inquiry, the facts elicited at the evidentiary hearing, and as found by the District Court in connection with Rivera's first motion to suppress, confirm the lack of causal connection between the asserted illegality and the statements in issue (A-45). Reference to the pertinent criteria set forth in *Brown* compels the conclusion that any taint occasioned by the asserted illegality of Rivera's arrest was long dissipated by the time the statements in issue here were made. 422 U.S. 603-604.

First, Rivera was given his *Miranda* warnings on at least two occasions, including immediately prior to making the inculpatory statement at issue.

Second, the statements and the arrest were temporally distant; some thirteen hours separated Rivera's arrest at approximately 11:40 p.m. on April 16, 1974 and his first admissions, made to an Assistant United States Attorney, at approximately 1:10 p.m., the next day.

Third, the "intervening circumstances" between arrest and confession, *ibid.*, include the fact that (a) which of that period constituted a hiatus during which Rivera

was lodged with co-defendant Glenn overnight at Manhattan Federal Detention Headquarters; (b) that at virtually all pertinent times during the period between arrest and confession Rivera enjoyed the company of one or more of his arrested co-defendants and friends—thereby minimizing any arguably coercive influence of isolation; and (c) that approximately one-half hour before he was interviewed by the Assistant United States Attorney to whom he made the statements, Rivera requested and was granted permission to make a telephone call and thereafter did telephone a friend in order to make arrangements to secure an attorney.

Fourth, and perhaps most importantly, here, unlike *Brown*, there was no purposeful and flagrant official misconduct. 422 U.S. at 604. Unlike *Brown*, the District Court here did not, and could not properly, find that the purpose of the arrest was "for investigation" or for "questioning." *Id.* at 605. Indeed, Rivera's arrest here was marked, indisputably, by good faith and was a product of the fact that an undercover federal narcotics agent was a personal witness to Rivera's arrival and presence at, and participation in, a meeting at which illicit drug transactions were discussed and at which one such transaction was actually consummated. This case is unlike both *Brown* and *United States* v. *Karathanos*, Dkt. No. 75-1322 (2d Cir. Feb. 2, 1976), *slip op.* 1713, 1727-1729, because there prior to the initial illegality, Government officials lacked any personal knowledge of the defendants' criminal conduct and, indeed, obtained admissible evidence of the same solely by means of the direct exploitation of the primary illegality. Here, in contrast, knowledge of Rivera's identity and his presence at and participation in a drug transaction and related negotiations was secured in the very first instance in a wholly lawful manner, and not by any illegal arrest, search or seizure. Even had Rivera not been arrested along with his co-defendants, it is a virtual

certainty that thereafter he would have been subjected to questioning by federal authorities—either in a grand jury or elsewhere—regarding, at a minimum, his presence and conduct at the pertinent meeting. Unlike *Brown*, Rivera's arrest was simply not investigatory and not "calculated to cause surprise, fright and confusion." 422 U.S. at 605.

In dictum peculiarly apposite here, the Supreme Court in *Brown* said, "[i]t is entirely possible, of course, . . . that persons arrested illegally frequently may decide to confess as an act of free will unaffected by the initial illegality." *Id.* at 603. Here, Rivera's decision to confess may accurately be said to spring from his conclusion, wholly unrelated to the fact of his arrest, that silence would be futile in light of the fact that a federal undercover agent had personal knowledge of his, Rivera's involvement in the drug transaction and in light of the fact that his arrested co-defendants, particularly Glenn, might themselves make post-arrest statements fully implicating Rivera—which in fact Glenn did do shortly after Rivera himself confessed.

In these circumstances, Judge Motley's determination to suppress, premised on her application of a *per se* rule, cannot stand.

CONCLUSION

The order of the District Court should be reversed.

Respectfully submitted,

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AFFIDAVIT OF MAILING

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

ALLEN R. BENTLEY, being duly sworn, deposes and says that he is employed in the office of the United States Attorney for the Southern District of New York.

That on the 8th day of March, 1976, he served two copies of the within brief by placing the same in a properly postpaid franked envelope addressed:

DANIEL J. STEINBOCK
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And deponent further says that he sealed the said envelope and placed the same in the mail box for mailing at One St. Andrew's Plaza, Borough of Manhattan, City of New York.

Allen R. Bentley
ALLEN R. BENTLEY

Sworn to before me this
8th day of MARCH, 1976

Jeanette Ann Grayeb

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Notary Public, State of New York
No. 24-1541575
Qualified in Kings County
Commission Expires March 30, 1977